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EXAMINER

NGUYEN, HAI V

ART UNIT	PAPER NUMBER
2142	8

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/935,129	SCHWEITZER ET AL.
	Examiner	Art Unit
	Hai V. Nguyen	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 April 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 32-49 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 32-49 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

1. This Office Action is in response to the application filed on 21 August 2001.
2. Claims 1-31 are cancelled.
3. Claims 32-49 are presented for examination.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 32-49 are rejected under the judicially created doctrine of double patenting over claim 1 of U. S. Patent No. **6,418,467** since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

**In the instant application claim 32:**

A method for reporting on the collection of network usage information from a plurality of network devices, comprising:

- (a) collecting network communications usage information in real-time from a plurality of network devices;
- (b) filtering and aggregating the network communications usage information;
- (c) completing a plurality of data records from the filtered and aggregated network communications usage information, the plurality of data records corresponding to network usage by a plurality of users;
- (d) storing the plurality of data records in a database;
- (e) allowing the selection of one of a plurality of reports for reporting purposes;
- (f) submitting queries to the database utilizing the selected reports for retrieving information on the collection of the network usage information from the network devices; and
- (g) outputting a report based on the queries.

**In this regard, U. S. Patent No. 6,418,467 in claim 1:**

A method for billing and charging for network usage comprising:

- (a) collecting network communications usage information in real-time from a plurality of network devices...on the network;
- (h) filtering the network communications usage information utilizing the central event manager;
- (i) aggregating the network communications usage information and the data records utilizing the central event manager for reducing a number of the data records;
- (k) completing a plurality of data records from the filtered network communications usage information by accessing user account information,..., the plurality of data records corresponding to network usage by a plurality of users;
- (o) storing the time stamped data records in tables in a central database coupled to the central event manager at a user-specified interval;
- (e) (vii) allowing the user to choose at least one of the listed fields, and (e) (viii) allowing a user to choose at least one of the listed functions;
- (r) submitting network activity queries to the central database for retrieving information on activity of the network; and (t) submitting resource consumption queries to the central database for retrieving information on resource consumption in the network;
- (s) outputting a network activity report based on the network activity queries; (u) outputting a resource consumption report based on the resource consumption queries.

**In the instant application claim 46:**

A method for reporting on the collection of network usage information from a plurality of network devices, comprising:

(a) collecting network communications usage information in real-time from network devices at a plurality of layers utilizing multiple gatherers each including a plurality of information source modules each interfacing with one of the network devices and capable of communicating using a protocol specific to the network device coupled thereto, the network devices selected from the group consisting of routers, switches, firewalls, authentication servers, web hosts, proxy servers, netflow servers, databases, mail servers, RADIUS servers, and domain name servers, the gatherers being positioned on a segment of the network on which the network devices coupled thereto are positioned for minimizing an impact of the gatherers on the network;

(b) translating the network communications usage information collected from the network devices utilizing the information source modules;

(c) caching the network communications usage information collected from the network devices utilizing the gatherers;

(d) normalizing the network communications usage information with the gatherers by excluding fields not required by a central event manager coupled to the gatherers;

(e) defining an enhancement procedure utilizing the central event manager;

(f) coordinating the collection of the network communications usage information by the gatherers utilizing the central event manager;

(g) filtering the network communications usage information utilizing the central event manager;

(h) completing a plurality of data records from the filtered network communications usage information, the plurality of data records corresponding to network usage by a plurality of users;

(i) aggregating the network communications usage information and the data records utilizing the central event manager for reducing a number of the data records;

(j) enhancing the aggregation of the network communications usage information with the gatherers in accordance with the defined enhancement procedure;

(k) time stamping the data records;

(l) storing the time stamped data records in tables in a central database coupled to the central event manager at a user-specified interval;

(m) deleting the stored data records upon the cessation of a predetermined amount of time after the storage utilizing the timestamp;

(n) periodically determining whether the network devices are currently licensed;

(o) submitting network activity queries to the central database for retrieving information on activity of the network;

(p) outputting a network activity report based on the network activity queries;

(q) submitting resource consumption queries to the central database for retrieving information on resource consumption in the network;

(r) outputting a resource consumption report based on the resource consumption queries; and

(s) generating an alert upon the occurrence of an event utilizing the information source modules.

**In this regard, U. S. Patent No. 6,418,467 in claim 1:**

A method for billing and charging for network usage, comprising:

(a) collecting network communications usage information in real-time from network devices at a plurality of layers utilizing multiple gatherers each including a plurality of information source modules each interfacing with one of the network devices and capable of communicating using a protocol specific to the network device coupled thereto, the network devices selected from the group consisting of routers, switches, firewalls, authentication servers, web hosts, proxy servers, netflow servers, databases, mail servers, RADIUS servers, and domain name servers, the gatherers being positioned on a segment of the network on which the network devices coupled thereto are positioned for minimizing an impact of the gatherers on the network;

(b) translating the network communications usage information collected from the network devices utilizing the information source modules;

(c) caching the network communications usage information collected from the network devices utilizing the gatherers;

(d) normalizing the network communications usage information with the gatherers by excluding fields not required by a central event manager coupled to the gatherers;

(e) defining an enhancement procedure utilizing the central event manager;

- (g) coordinating the collection of the network communications usage information by the gatherers utilizing the central event manager;
- (h) filtering the network communications usage information utilizing the central event manager;
- (k) completing a plurality of data records from the filtered network communications usage information by accessing user account information,..., the plurality of data records corresponding to network usage by a plurality of users;
- (i) aggregating the network communications usage information and the data records utilizing the central event manager for reducing a number of the data records;
- (j) enhancing the aggregation in accordance with the defined enhancement procedure,..., with additional network communications usage information;
- (n) time stamping the data records;
- (o) storing the time stamped data records in tables in a central database coupled to the central event manager at a user-specified interval;
- (p) deleting the stored data records upon the cessation of a predetermined amount of time after the storage utilizing the timestamp;
- (q) periodically determining whether the network devices are currently licensed;
- (r) submitting network activity queries to the central database for retrieving information on activity of the network;
- (s) outputting a network activity report based on the network activity queries;
- (t) submitting resource consumption queries to the central database for retrieving information on resource consumption in the network;

- (u) outputting a resource consumption report based on the resource consumption queries; and
- (y) generating an alert upon the occurrence of an event utilizing the information source modules.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 32-49 are rejected under 35 U.S.C. 102(b) as being anticipated by

**Herbert U.S. patent no. 5,333,183.**

8. As to claim 32, Herbert teaches substantially the invention as claimed, including a method for reporting on the collection of network usage information (MDR data) from a plurality of network devices (switches), comprising:

- (a) collecting network communications usage information in real-time from a plurality of network devices (Herbert, Abstract, Figs. 5, 8, 20);
- (b) filtering and aggregating the network communications usage information (Herbert, col. 15, table 7(b); col. 21, table 3(b));
- (c) completing a plurality of data records from the filtered and aggregated network communications usage information, the plurality of data records corresponding to network usage by a plurality of users (Herbert, cols. 24-25, table 5);
- (d) storing the plurality of data records in a database (Herbert, col. 6, lines 47-60);
- (e) allowing the selection of one of a plurality of reports for reporting purposes (Herbert, Abstract; col. 22, line 42 – col. 23, line 16);
- (f) submitting queries to the database utilizing the selected reports for retrieving information on the collection of the network usage information from the network devices (Herbert, Abstract; col. 24, line 1 – col. 25, line 56); and
- (g) outputting a report based on the queries (Herbert, Fig. 12, item 216; col. 29, line 49 – col. 30, line 25).

9. As to claim 33, Herbert teaches, further comprising submitting network activity queries to the database utilizing the selected reports for retrieving information on activity of the network (Herbert, Fig. 12, item 216; col. 29, line 49 – col. 30, line 25).

10. As to claim 34, Herbert teaches, further comprising outputting a network activity report based on the network activity queries (Herbert, Fig. 12, item 216; col. 29, line 49 – col. 30, line 25).

11. As to claim 35, Herbert teaches, further comprising submitting resource consumption queries to the database utilizing the selected reports for retrieving information on resource consumption in the network (Herbert, Fig. 12, item 216; col. 29, line 49 – col. 30, line 25).
12. As to claim 36, Herbert teaches, further comprising outputting a resource consumption report based on the resource consumption queries (Herbert, Fig. 12, item 216; col. 29, line 49 – col. 30, line 25).
13. As to claim 37, Herbert teaches, and further comprising generating an alert upon the occurrence of an event (Herbert, col. 29, lines 16-48).
14. As to claim 38, Herbert teaches, wherein the alert is generated upon a value surpassing a predetermined amount (Herbert, col. 13, line 49 – col. 14, line 11).
15. As to claim 39, Herbert teaches, wherein the alert indicates that services should be ceased (Herbert, Fig. 11; col. 14, lines 11-36; col. 29, line 49 – col. 30, line 25).
16. As to claim 40, Herbert teaches, wherein the alert indicates that services should be provided (Herbert, col. 29, line 49 – col. 30, line 25)..
17. As to claim 41, Herbert teaches, wherein the report includes an auditing report (Herbert, col. 25, table 5; col. 28, lines 10-21).
18. As to claim 42, Herbert teaches, wherein the report includes a billing report (Herbert, col. 29, lines 49-62).
19. As to claim 43, Herbert teaches, wherein the report includes an accounting report (Herbert, col. 14, lines 37-49).

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20. Claim 44 is corresponding computer program product residing on computer readable medium claim of claim 32; therefore, it is rejected under the same rationale above.

21. Claim 45 is corresponding system claim of claim 32; therefore, it is rejected under the same rationale above.

22. Claim 46 is substantially the same as claims 32-37 and is thus rejected for the reasons set for those in the rejection of claims 32-37.

23. Claims 47-49 are substantially the same as claims 38-40 and is thus rejected for the reasons set for those in the rejection of claims 38-40.

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24. Further references of interest are cited on Form PTO-892, which is an attachment to this action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai V. Nguyen whose telephone number is 703-306-0276. The examiner can normally be reached on 7:00-3:30 Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on 703-305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7240.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3800/4700.

KENNETH R. COULTER  
PRIMARY EXAMINER  
*Kenneth Coulter*

Hai V. Nguyen  
Examiner  
Art Unit 2142

